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ABSTRACT

This hearing contains testimony presented at a hearing conducted to investigate the legality of the President's early termination of the appointments of three members of the National Commission on Libraries and Information Science (NCLIS). On September 21, 1981, three NCLIS commissioners, Clara Jones, Frances Naftalin, and Joan Gross, received notices from the White House that their 5-year commission appointments, due to expire in July 1982, were being terminated immediately. This action was considered to be of questionable constitutionality, since while the commissioners are appointed by the President, the length of the terms they are to serve is mandated by the law that established the commission. At the conclusion of the hearing, Chairman Simon stated that, as an initial step, he would write to the Justice Department. If this action did not settle the matter, he suggested that the subcommittee had basically two options; either a resolution by the House, or a temporary injunction against the removal of the commissioners from NCLIS. This document includes the opening statement of the Hon. Paul Simon, chairman of the subcommittee, and the statements of Frederick Burkhardt, chairman emeritus of NCLIS, and Clara Jones and Frances Naftalin. (DMC)

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HEARING ON THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE [NCLIS]

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HEARING

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, D.C.,
APRIL 27, 1982

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HEARING ON THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE [NCLIS]

TUESDAY, APRIL 27, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:20 p.m., in room 2261, Rayburn House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon and Erdahl.

Staff present: Maryln McAdam, legislative assistant; Diane Cregger, administrative secretary and Betsy Brand, legislative associate.

Mr. SIMON. The subcommittee hearing will come to order.

On September 21, 1981, three commissioners of the National Commission on Libraries and Information Science, Clara Jones, Frances Naftalin, and Joan Gross received notices from the White House that their 5-year commission appointments were being terminated immediately. This was an unprecedented action of questionable constitutionality.

I might say it is unprecedented as far as the libraries. There was a precedent in the appointment to the Pardon and Parole Commission and there the White House has backed down and I hope will do so here also.

While the commissioners are appointed by the President, the length of terms they are to serve is mandated by law which established the Commission.

The National Commission was established in 1970 by Public Law 91-345. One of its stated purposes is to advise and assist the Congress and the President on the implementation of national policy for libraries. I have been impressed with the work of the Commission and the commission members. This subcommittee is currently reauthorizing the Library Services and Construction Act, and during the process we have repeatedly turned to the Commission for assistance.

When Congress established the terms of the commissioners, the terms of the commissioners were set at 5 years and staggered. I will enter the rest of my statement in the record. My hope is that we are not launching on the commission into something that moves in a partisan direction. I think one of the things that we've had in the past is removal from that and I think it should continue to be that.

One of the things I'm pleased about on this subcommittee is that we have had a—while, obviously, we have strong partisan feelings, we have had a bipartisan approach to our problems.

Our witnesses today are Dr. Frederick Burkhardt, chairman emeritus of the Commission; Frances Naftalin, and Clara Jones, commission members whose appointments had been terminated. I might add that we also requested that an official from the Justice Department testify today. However, they have declined to do so. And let me add that we will be following up this meeting with a contact with the Justice Department on this question.

[Opening statement of Chairman Simon follows:]

OPENING STATEMENT OF HON. PAUL SIMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS AND CHAIRMAN, SUBCOMMITTEE ON POSTSECONDARY EDUCATION

On September 21, 1981, three commissioners of the National Commission on Libraries and Information Science—Clara Jones, Frances Naftalin, and Joan Gross received notices from the White House that their 5-year commission appointments were being terminated immediately. This was an unprecedented action of questionable constitutionality. While the commissioners are appointed by the President, the length of the terms they are to serve is mandated by the law which established the Commission.

The National Commission was established in 1970 by Public Law 91-345. One of its stated purposes is to advise and assist the Congress and the President on the implementation of national policy for libraries. I can tell you from personal experience that the Commission serves this function well. This subcommittee is currently reauthorizing the Library Services and Construction Act [LSCA], and during the process we have repeatedly turned to the Commission for its expertise and assistance. The response has been excellent.

When Congress established the Commission, the terms of the commissioners were set at five years and staggered. The purpose of this was to provide continuity to the Commission and its activities. The terms were never intended to become a political vehicle for whatever administration held office. The history of the Commission shows that this approach has worked well. Over the years the Commission has served in a nonpartisan fashion that does it great credit. It would be a tragic precedent to now allow the Commission to become a political toy to be changed by administrative whim.

The actions taken by the administration also brings forth an even more ominous situation. It is simply not at the discretion of this or any administration to replace qualified individuals who are serving commission terms that are established by law. It is a breach of the separation of legislative and executive powers which is at the very core of our democracy. It is therefore essential that this subcommittee and the Congress address and investigate this issue thoroughly.

Our witnesses today are Dr. Fredrick Burkhardt, chairman emeritus of the Commission, Frances Naftalin, and Clara Jones, commission members whose appointments have been terminated. I might add that we also requested that an official from the Justice Department testify today. However, they declined to do so. We will be following up in a letter asking them to comment on the dismissal of the commissioners.

We are very pleased then, Mr. Burkhardt, to have you as our initial witness. And we will hear from all three of you and then toss questions at the three of you.

STATEMENT OF FREDERICK BURKHARDT, CHAIRMAN EMERITUS, NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCES

Mr. BURKHARDT. Mr. Chairman, my name is Frederick Burkhardt; I was the first chairman of the National Commission on Libraries and Information Science, and served from the initial appointments until 1978 when I resigned because I felt that the press

of other interests would interfere with my effective functioning as chairman.

I was also vice chairman of the predecessor advisory commission, which recommended the establishment of the present National Commission as a continuing Federal planning agency. Therefore, since I have been associated with NCLIS since its very inception, I feel that I can provide some perspective on the legislative history of the NCLIS enabling law, Public Law 91-345.

When I testified in support of the establishment of NCLIS before the Select Subcommittee on Education in the spring of 1969, I made the point—as did many others—that it was absolutely essential for the Commission to be independent of any other agency. Let me quote briefly from that statement. "It must be independent of any particular operating agency or any particular ongoing program. Otherwise, it won't have the autonomy and the freedom to make recommendations for an overall Federal program."

There was at the time some hesitation about the Federal Government establishing an agency concerned with information policymaking. Some people were afraid that such an agency might be put to propagandistic use. Consequently, those who formulated the legislation took pains to set it up in such a way that it would be protected from domination by narrow special interests and from outside interference of any kind.

The hearings at the time also made it clear that once established the Commission's responsibilities were such that its members should be possessed of the highest possible professional standards and competence in the various fields with which the agency would be concerned.

The question that concerns us today is that of the status of the members of the governing board of an independent agency. Do they serve at the pleasure of the administration, or is their tenure protected from arbitrary termination by legal as well as professional consideration?

On the legal aspects of this question, I shall rely heavily upon the testimony of attorney J. Jonathan Schraub in the matter of the removal of Parole Commissioner Oliver J. Keller.

On February 4, 1982, at his appearance before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Mr. Schraub made a number of points that are equally pertinent to the question of removal of NCLIS commissioners prior to the end of their term.

I am sure that they should be in the record of this hearing. Since I will be paraphrasing slightly, I will not use quotes, but much of what I have to say in the next few minutes is taken almost directly from Mr. Schraub's testimony.

The first point is that the President's apparent belief that he has the right, at will, to terminate NCLIS commissioners raises two fundamental legal issues: One, in enacting the NCLIS enabling legislation, Public Law 91-345, did Congress intend to create an independent agency free of executive control?; and, two, if so, does the President, under the Constitution, have the authority to terminate, at will, an NCLIS commissioner?

The legislative history of NCLIS Act clearly demonstrates the intent of the Congress that the new Commission be a fully inde-

pendent agency in the executive branch. In fact, one of the bills would have attached the commission to the Department of Health, Education, and Welfare, but after considerable testimony in opposition to this placement, the conference committee agreed that it would be independent.

The question of the terms of the commissioners is crucial to the independence mandated by the Congress.

One of the few points that both the House and the Senate bills were in complete agreement on was that the commissioners be appointed for a fixed 5-year terms, and that the terms be staggered so that most of the commissioners at any given time would have had several years of experience on the Commission.

This arrangement was obviously intended both to insulate the commission from shifting political winds and to provide assurance of continuity.

If the resolution of the question in the final law does not make the intent of Congress abundantly clear, the following quotes from House Report No. 91-240 on H.R. 10666, which was the House bill establishing NCLIS, should put to rest any lingering doubts: "Your committee has sought to assure that the Commission will enjoy the high level and independent status which it needs to avoid becoming either a rubber stamp for existing agencies, or merely a forum for an exchange of views. To assure the Commission's total independence"—which the emphasis is mine—"it is made a separate agency within the executive branch, free of any control by any other federal executive agency."

Another quote: "Your committee cannot too strongly emphasize the concept that if the commission is to perform its assigned function of providing leadership, innovative advice and coordination for our nation's libraries and information science establishments, it must be able to state the problems as it sees them, to evaluate existing programs without grinding anyone's ax, and to make such recommendations as seem wise to the commission and its members."

With the intent of Congress established, we turn to the question of whether the President has the authority to terminate, at will, NCLIS commissioners.

Let me return at this point to Mr. Schraub's testimony. He supports his contentions with references to two Supreme Court decisions and a recent district court decision. The citations, as he gives them are: *Humphrey's Executor* v. *United States,* 295 U.S. 602, 79 L.Ed. 1611 (1935); *Weiner* v. *United States,* 357 U.S. 349, 2 L.Ed. 2d 1377 (1958); and *Borders* v. *Reagan,* 518 F. Supp. 250 (D.C.D.C. 1981).

I want to read just a few excerpts: "In *Humphrey's,* the Supreme Court adopted a clear, practical transactional test. That is, in order to determine the scope of the President's authority to terminate, it looked to the nature of the affected office and the congressional intent."

"The *Weiner* court reinforced the very narrow reading of the *Myers* decision enunciated in *Humphrey's.* And *Weiner* then gave its own interpretation of *Humphrey's.*"

And what is the essence of the decision in *Humphrey's* case? It drew a sharp line of cleavage between officials who were part of the executive establishment and were thus removable by virtue of

the President's constitutional powers and those who are members of a body to exercise its judgment without the leave or hindrance of any other official or any department of government as to whom the power of removal exists only if Congress may fairly be said to have conferred it.

This sharp differentiation derives from the difference in functions between those who are part of the executive establishment and those whose tasks require absolute freedom from executive interference. The authority is *Weiner* v. *United States.*

The Court's decision in *Weiner* is, in Mr. Schraub's opinion—and mine—dispositive of the issue, and merits reading in full.

If, as one must take for granted, the War Claims Act precluded the President from influencing the Commission in passing on a particular claim, a fortiori must it be inferred that Congress did not wish to have hang over the Commission the Damocles' sword of removal by the President for no reason other than that he preferred to have on that Commission men of his own choosing.

But such is the case. We have not a removal for cause involving the rectitude of a member of an adjudicatory body. Judging the matter in all the nakedness in which it is presented, namely, the claim that the President could remove a member of an adjudicatory body like the War Claims Commission merely because he wanted his own appointees on such a commission, we are compelled to conclude that no such power is given to the President directly by the Constitution, and none is impliedly conferred upon him by statute simply because Congress said nothing about it. The philosophy of *Humphrey's Executor,* in its explicit language as well as its implications, precludes such a claim.

In the *Borders* v. *Reagan* case, which incidentally was barely a year ago, Judge Penn, after carefully reviewing the cases cited earlier, concluded that they "Established the principle that there are some offices that by their nature and function are meant to be independent of control, direction or interference from the President." (*Borders* v. *Reagan,* supra at 259.) It's the authority. In reaching this conclusion, the court refused the Government's invitation to narrowly construe *Humphrey's* and *Weiner* by applying it only if an office could be "pigeonholed as a quasi-legislative or quasi-judicial one, only if it is on all fours with the factual pattern" presented in *Humphrey's* and *Weiner.*

Now, these three cases established three indisputable points: First, there are some offices that by their nature and function are meant to be independent of control, direction or interference by the President.

Second, the power to remove persons in such offices, at will, effectively destroys that independent, and, third, the President, therefore, does not have such a power of removal. This disposes of the second of fundamental legal issues I raised at the beginning of my statement.

In closing, I want to raise a couple of issues that do not relate to the legislative or judicial processes, but which are, nonetheless, significant. The three commissioners whose service was terminated last fall are the three whose terms expire this coming July anyway. And one has to ask: "Why these three?"

Since no reasons were given to any of them, it is difficult to avoid the conclusion that the administration chose them precisely in order to obscure the question of principle involved. With less than a year to serve, it might seem to some that contest and contention were not worth the trouble.

But the principle is very much worthwhile, and we must vigorously oppose any precedent which would make it easy to embark on wholesale replacements of incumbents in positions whose nature and function require freedom from executive interference.

My final point has to do with the way the commissioners were informed of their dismissal. Let me read the full text of those letters: "Pursuant to the direction of the President, this is to notify you that your appointment as a member of the National Commission on Libraries and Information Science will be terminated today. Please do not construe this action in any way as reflection upon you personally."

Now, the kindest word I can find for that letter is that it is peremptory.

I ask you, Mr. Chairman, is this the way this administration thanks people for 4 years of devoted service to their country?

One final word. I hope that since these three people's terms, as you pointed out, expire in July, which is not too far away the way things move, I hope it isn't allowed to just dwindle away. I think this issue ought to be confronted and resolved while we have it before us and not just let it wither away as an issue to come up some other time to be fought again. And I think the issue is clear. I think, just as the parole commissioner's case, we have the same situation in this case and I think it should be faced and acted upon as soon as we can.

Thank you, Mr. Chairman.

Mr. SIMON. Thank you very much for an excellent statement.

I would next like to ask Frances Healy Naftalin from St. Paul, Minn., to testify.

STATEMENT OF FRANCES HEALY NAFTALIN, COMMISSIONER, NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Mrs. NAFTALIN. Thank you very much, Mr. Chairman. I am Frances Healy Naftalin. However, I am from Minneapolis, Minn., Mr. Chairman.

Mr. SIMON. I'm sorry.

Mrs. NAFTALIN. And I wanted to convey greetings——

Mr. SIMON. It is an important distinction in your area.

Mrs. NAFTALIN [continuing]. It is very important, and, particularly, I want to bring greetings to you from our mayor, Donald Fraser, who previously served with you on this committee.

Mr. SIMON. I thank you very much.

Mrs. NAFTALIN. In 1978, I was appointed by President Carter as a member of the National Commission on Libraries and Information Science.

I want to underline your statement about the importance of nonpartisanship in these appointments

According to the certificate of appointment, which I received, I was informed that he was reposing special trust and confidence in my integrity and ability. And for that reason was appointing me for a term expiring July 19, 1982.

I will not presume to make claim to integrity and ability necessarily, but I was appointed to be one of the two-thirds of the members of the Commission who are not professional librarians or information scientists, but who are intended to be persons having special competence or interest in the needs of our society for library and information services.

I do claim to represent that group of people. I have been elected by the citizens of Minneapolis in 1971 and, again, in 1977 to be a member of the library board of the city and have been serving as president of that board since 1978. I have submitted to you a curriculum vitae, which indicates a range of experience and civic participation which I feel gives me an appropriate background for representing those citizens who have need of library and information services.

I have been a faithful attender of the meetings of the commission and have attempted to carry out the duties which have been assigned as part of my service there.

During the last 6 months, there has been special attention paid, as you have pointed out, to revision and renewal of the Library Services and the Construction Act and, indeed, to library legislation in general. This is the area in which I feel particular interest and competence and I feel aggrieved to be shut off from the possibility of providing counsel in that particular area. I consider myself to be still a member of the Commission relying on the statement in the certificate of appointment as it is supported by the legislation and I trust that this body will confirm that judgment.

Thank you very much, Mr. Chairman.

Mr. SIMON. We thank you very much, Mrs. Naftalin.

And Dr. Clara Stanton Jones, who was a witness before our committee—was it here?

Dr. JONES. San Francisco.

Mr. SIMON. San Francisco, yes.

STATEMENT OF CLARA STANTON JONES, COMMISSIONER, NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Dr. JONES. I am Clara Stanton Jones, a resident of Oakland, Calif. I was appointed in 1978 to the Commission. I might say that I am retired now, a retired director of the Detroit Public Library and a past president of the American Library Association. I am one of the five on the commission who are—this is designated in the law—that five should be librarians or members of the information library science profession.

In the spring of 1978, I was notified that the Senate had confirmed my appointment to the National Commission on Libraries and Information Science—we usually say N-C-L-I-S or NCLIS—to serve the remaining 4 years of a 5-year term that would expire July 19, 1982. Therefore, I was surprised and shocked to receive a letter from the Office of the President advising me that as of the date

of the letter, September 21, 1981, I was no longer a member of the Commission

It was added in the letter that this action was in no way a reflection on me personally. The two other commissioners, whose terms are due to expire July 1982, were removed at the same time. I believe that there is reason for serious concern about the peremptory dismissal of members of the National Commission on Libraries and Information Science. Public Law 91-345, by which the commission was established in 1970, states in section 3(a): "There is hereby established as an independent agency within the executive branch a National Commission on Libraries and Information Science (hereinafter referred to as the 'Commission.')"

And in another section of the law. "The Commission shall advise the President and the Congress on the implementation of national policy;" that is, with regard to libraries and information science "as it, the 'Commission,' deems appropriate."

And in another section of the law: "The Commission shall be composed of the Librarian of Congress and 14 members appointed by the President by and with the advice and consent of the Senate. The terms of office of the appointed members of the Commission shall be 5 years. And a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term."

That is specifically about my—rather, I fit particularly in there.

There is no equivocation. Commissioners' tenure of service is established by Public Law 91-345. This authority was delegated to the President.

The aforesaid dismissals follow the pattern of appointive bodies that serve at the pleasure of the President, whereas Public Law 91-345 established an ongoing Commission and designated the duration of its members terms of service.

The history of the Commission establishes the fact that it was not partisan or political in origin, nor has it been so in practice.

There are current members who have served under several successive Presidents, Republican and Democrat. The threat of dismissal would make an ongoing Commission, such as this one, subservient to the will of whichever administration was in office. In other words, it would politicize it. This kind of practice would encourage conflicting loyalties and partisan division, and would rob the Commission of the confidence, respect, and professional authority it needs and has earned to provide national leadership in our information-dependent society.

If the Commission should become thus politicized, its usefulness would be nullified for it could no longer function as an independent agency giving impartial professional advice to the President, the Congress and appropriate Government agencies as charged by the law.

Public Law 91-345 provides staggered terms for members of the Commission. Three retire each year, giving every President the opportunity to appoint or reappoint a total of 12 commissioners during each 4 years in office.

This orderly process enables every administration to have some influence on the direction of the Commission by means of its ap-

pointments without, however, disrupting the ongoing work or allowing the intrusion of political or other outside control.

The dismissals from this Commission have ominous implications for other Federal Commissions, such as, for example, the Federal Communications Commission, the Federal Trade Commission, and many others. The intrusion of political pressures would render them ineffective, also.

The resulting discontinuance of meaningful citizen participation in planning and decisionmaking that affects many areas of national life is a denial of democratic practice. And I feel very strong about that.

Also, if this practice of dismissing commissioners at any time violating what the law says were in practice, this would be setting a dangerous precedent and could spread, but not only that, it would make it less possible, or perhaps impossible to get just the right type of expert or professional that is needed—who is needed to serve on such a commission because the Commission's integrity could not be counted on. Your time of service, your work would be interrupted and so many people would be loathe to serve on that kind of commission.

By now, the terms of the three commissioners in question are soon to expire. My challenge to the President's action, therefore, stems from concern for the underlying principle and the broad ramifications that could extend from this situation.

It is for this reason that I have shared my reaction. I thank you for the opportunity.

Mr. SIMON. Thank you very much—all three of you for your excellent testimony.

Mr. Burkhardt, I agree completely that the precedent is important even though the time left here is not that great.

Dr. Jones, you heard Mrs. Naftalin read that your commission said that the President has special trust in your integrity and ability. Has anything happened as far as you know for the President or anyone to question your integrity and ability?

Dr. JONES. No. And as I quoted from the leader and Dr. Burkhardt quoted the entire letter, the President said so, so to speak, speaking through the person who issued it, there is nothing.

Mr. SIMON. Mrs. Naftalin, other than being from Minnesota, do you know of any reason why your integrity and ability should be in question?

Mr. BURKHARDT. No. I know of no reason why they should be in question and, as Mrs. Jones points out, we are told in the letter we received that it is not a reflection on us personally; so, we can interpret it only as a political action.

Mr. SIMON. Mr. Burkhardt, you were appointed by President Nixon, as I recall?

Mr. BURKHARDT. Originally.

Mr. SIMON. Originally.

Mr. BURKHARDT. And before that by President Johnson to the advisory commission, which did the exploratory work that later led to the legislation.

Mr. SIMON. Which is a good illustration because it is—we have had on the Commission historically, as Dr. Jones has pointed out—a bipartisan or nonpartisan tradition.

Mr. BURKHARDT. Right.

Mr. SIMON. And what we do not need is a commission that is just simply a rubber stamp for any administration of either party.

May I address this question to the three of you. Did you consider legal action at all? And I know we have been going to hold this hearing sometime ago, and it has been delayed for one reason or another, but by legal action going to the courts on the question? question?

Mrs. NAFTALIN. That, of course, Mr. Chairman, was a possibility that occurred to us and I must say in the heat of the moment upon receiving the letter, it did seem to me that legal action might be appropriate, but on consideration, I came to believe that what was at stake was not a personal situation, but the question as to whether a law passed by Congress was to prevail in this situation. And it is my belief that the course of action which has been undertaken, namely, this hearing is the most appropriate way to address the situation.

Mr. SIMON. Dr. Jones.

Dr. JONES. I might add, also, that I agree with that. That was my trend of thinking. That the Congress is the one to take care of it. Would it be possible for the Congress to make its position clear by passage of a resolution saying that the interpretation of the law that members are appointed at the pleasure of the President was not the intent of Congress since Congress is always very, very sensitive to the interpretation of its intent.

I might say that I talked with Congressman George Crockett from Michigan and I informed him—I talked with someone on its staff—of this situation and he wrote a letter of protest about this and received an answer back saying that we serve at the pleasure of the President. So, that is evidently the interpretation and that should be clarified because although it is quite valid for certain commissions or committees to be appointed for special tasks during a President's term or to serve at the President's pleasure, but that is quite different from an ongoing committee that is established by law with their terms of office spelled out. So, I want to just raise that as a question because that is what came through my mind that this would be the best route through the Congress, beginning with a hearing, if such a thing can result if the Congress decides to do this.

Mr. SIMON. Mr. Erdahl.

Mr. ERDAHL. Thank you very much, Mr. Chairman.

I want to share with members of the audience that any polite and light jive that the chairman made about Mrs. Naftalin being from Minnesota was really directed at me as one from Minnesota. [Laughter.]

That is, of course. not a bad mark on her record; it is a very positive one.

One of the things that disturbed me as we think about the politicizing of this, which, I think that is what it is. Is that the very reason that these boards, ones like it and this one, specifically go beyond the term of the Chief Executive is to see that it isn't politicized. That we have certainly—and Mr. Simon and I and others in the Congress we have all kinds of things about which to argue politically among ourselves and between ourselves and the adminis-

tration, but there are certain basic concepts and certainly the idea of having an objective commission to see that we have good libraries and that we have the proper dissemination of knowledge in our country and information is but a very good example of something that need not get into the political arena at all. And I think, Mrs. Jones, you make a very valid point that the Congress, I think, set it up with that in mind and there is a definite distinction between those who serve at the pleasure of the President. And I would guess that Mr. Simon shares some concern that I had recently—I'll mention the name because it's been in the news—Mr. Clohan was summarily dismissed evidently because he wasn't—as one report had it—a good a team player. Maybe that is a risk of being in a position like that. I think that was a very unwise decision on the part of the administration because I know him personally; I know his dedication and whatnot, but I suppose that's a risk of a job like that. But the fact of the matter is that we have made a distinction between positions that serve, I think, as the lawyers put it, at the pleasure of the President during a term as a political appointee. And these boards and commissions that are set up with the very intent of not being a political or being a political, and whether we can do something about it, I think, is something that we, as a Congress, should continue to look into and I commend our chairman for—even though these hearings because of scheduling have been delayed, we're eventually getting to it, and I just thank all of you for being here, and I regret that I had to go to another meeting. Especially, I wanted to welcome my fellow Minnesotan, Mrs. Naftalin, here. So, thank you much for being here.

Mr. SIMON. I might say that we are going to follow through. I think the initial course I will take after consultation with my colleagues on the subcommittee will be to write to the Justice Department, but we are not going to wait very long for an answer from the Justice Department before pursuing other avenues. Precisely what those other avenues are, it seems to me we have basically two options. One is a resolution by the House and the second would be to go in and seek a temporary injunction.

Now, exactly where we will go, I don't know. But I think we will have to weigh those possibilities.

Let me just add one further word in addition, a general commendation of all three of you for the leadership you have given our Nation, is to note for the record that Mrs. Naftalin is the sister-in-law of our esteemed colleague, Berkley Bedell, and we're very pleased—another relative of Berkley Bedell gets a special welcome before this subcommittee.

Mrs. NAFTALIN. Mr. Chairman, you can understand that I consider it a distinct honor.

Mr. SIMON. Well, you are right.

Again, we thank the three of you for being here.

Let me ask—is not that anyone is going to be asked to testify, just to find out whether the message is going to get back. Is there anyone here from the Justice Department?

[No response.]

Mr. SIMON. For the record, I will note that there no hands raised. We will get the message to the Justice Department nevertheless.

Mr. ERDAHL. Is there anyone here from the White House, Mr. Chairman?

Mr. SIMON. Is there anyone here from the White House?

[No response.]

Mr. SIMON. My colleague, Mr. Erdahl, is the only one who raised his hand. [Laughter.]

Our subcommittee will stand adjourned subject to the call of the Chair.

[Whereupon, at 3:55 p.m., the hearing was adjourned.]

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